IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN &

THE HONOURABLE MR. JUSTICE SIRI JAGAN

FRIDAY, THE 9TH FEBRUARY 2007 / 20TH MAGHA 1928

WP(C).No. 4612 OF 2007(S)

AGAINST THE ORDER IN EA 5/07 IN EP 45/2006 IN OS.468/2003 OF FAMILY COURT, KOLLAM

.....

PETITIONER:

DELIX BENANCE, D/O. MARY ANNEXURE,
KOCHUVEEDU, THEKKUMBHAGOM, MUNDAKKAL,
KOLLAM DISTRICT.

BY ADV. SRI.P.A.NOOR MUHAMMED
SRI.C.K.PRASAD

RESPONDENTS: RESPONDENTS/DEFENDANTS 2 & 3

---

1. REV. FR. JOHN EUDES FERNS,
S/O. JOSEPH FERNS, GREEN VILLE,
THEKKUMBHAGOM, KOLLAM TALUK,
KOLLAM DISTRICT.

2. REETHA FERNZ, S/O. VALLERIAN,
GREEN VILLE, THEKKUMBHAGOM,
MUNDAKKAL VILLAGE, KOLLAM.

WRIT PETITION (CIVIL) HAVINGCOME UP FOR ADMISSION ON 09/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN & SIRI JAGAN, JJ.

==========

W.P.(C) NO. 4612 OF 2007

==========

DATED THIS, THE 9TH DAY OF FEBRUARY, 2007

J U D G M E N T

Raman, J.

Petitioner is the plaintiff in O.S. 468/2003 on the file of the Family Court, Kollam. Respondents are defendants 2 and 3 in the said suit. The suit is stated to be one for setting aside certain documents relating to the plaint schedule property . There was an interlocutory application made against the forcible eviction of the petitioner from the property alleging that she has been residing in the said property for the past several years. During the pendency of the suit, I.A. 2481 of 2003 was filed by the respondents (defendants 2 and 3) to restore possession of plaint schedule property to them. It was averred therein that the suit itself was filed by the plaintiff for a declaratory relief for right over the plaint schedule property and to set aside the sale and along with the said suit I.A.2242/2003 was also filed seeking an interim injunction. The court below passed an order on 11.11.2003 to maintain status quo in the said application. Alleging that they are in possession of the suit property as per the sale deed and that the plaintiff, in violation of the order passed by the court, trespassed into the

plaint schedule property I.A. 2481/2003 was filed for getting back possession of the property. I.A. 2482/2003 was also filed for initiating action against the petitioner herein for violation of the order under Order XXXIX Rule 2A. While enquiry was being held, the plaintiff absented and accordingly, the suit was dismissed and the interlocutory applications were disposed of by a common order produced as Ext.P5 herein. The family court directed the plaintiff, petitioner herein to surrender possession of the suit property to defendants 2 and 3 within two weeks. They were also allowed to realize compensation of Rs. 1,500/ from the plaintiff. This was challenged before this Court in W.P.(C) 31851/2006 and the learned counsel appearing for the petitioner submits that it was dismissed on 30.11.2006 against which the petitioner has preferred SLP (C) 1508/2007 before the apex court. But no stay was granted. Pursuant to the order Ext.P5, execution petition was filed seeking delivery of the property and by Ext.P6 order, the executing court disposed of the execution petition over-ruling the objection of the petitioner and ordering delivery and posting the case to 18.12.2006. The said order was challenged before this court in W.P.(C) 33525/2006. This Court adjourned the delivery for a short period so as to enable the petitioner to obtain a copy of the order passed in the execution petition obviously because the writ petition was filed without

producing the order as the copy was not at that time issued to her. Subsequently after obtaining the copy of the order, a review petition was filed as R.P. 79/2007 which was also dismissed relegating the petitioner to seek appropriate remedies against the order of delivery by filing a revision, if available under law. Petitioner thereafter preferred Ext.P9 before the family court at the execution stage seeking to stay the execution proceedings. According to the petitioner, the same was dismissed; but a copy was not issued.

2. The prayer made in this writ petition is to call for the records relating to the order dated 3.2.2007 said to have been passed by the Family court in E.A. 5/2007 and to pass appropriate orders allowing her prayer as raised in Ext.P9 application. Petitioner has not produced a copy of the order nor is there any prayer for issuance of any such copy of the same. According to the petitioner, she has already preferred an application for restoration of the suit and that is pending and as against the common order Ext.P6 she has already preferred a Special Leave Petition and in such circumstances, the execution court ought to have granted her a stay of further proceedings until a finality is reached in the suit or SLP.

3. We are unable to accept this contention. Admittedly only a restoration application is filed and it is pending. As such, as on date,

there is no suit pending. Even though the petitioner would submit that she has preferred a Special Leave Petition before the apex court, no stay has been obtained by her. As such Ext.P6 order is in force. Therefore, there is no merit in the contention that execution is liable to be stayed. When there is an enforceable order, execution court is right in not granting any stay as sought for.

We find no merit in this writ petition. The same is dismissed. We, however, direct the family court, Kollam to issue an emergent copy of the order passed in E.A. 5/2007 in E.P. 45/2006 in O.S. 468/2003, if an application to that effect is already made and is pending.

P.R. RAMAN,
(JUDGE)

SIRI JAGAN,
(JUDGE)

knc/-